

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 216 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PIRUBHAI VAFATIBHAI SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR EE SAIYED for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 3, 4

MR JD AJMERA for Respondent No. 2

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 27/03/98

ORAL JUDGEMENT

By this application, the petitioner, who is the detenu, calls in question the legality and validity of the detention order dated 1.1.98 passed by the District Magistrate, Ahmedabad, invoking his powers under Section 3(2) of the prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short 'the Act').

2. The petitioner in Zone No.2 of the City Taluka is dealing in kerosene under the licence granted to him. The licence is periodically renewed and lastly it is renewed upto 31.12.2000. As per the rules governing the distribution and sale of the kerosene, the petitioner under the terms and conditions of the licence granted to him was under obligation to sell kerosene to the Public periodically at the rates fixed, but instead of selling the kerosene to the public at fair price he used to divert the quota he received to other persons running the industries, factories or business for profiteering motive. The District Magistrate has also the information that Kundanbhai Dulabhai Shaikh, Parvezbhai Ahmedbhai Shaikh and Shah Mohammed Habibbhai Shaikh were also dealing in kerosene and by malpractices they were diverting the quota of the kerosene to the black marketeers. It was therefore decided to raid the place where the petitioner and others were keeping or storing the kerosene. On 12.12.97 when the business place of the petitioner on the back of Royal Hotel in Sarkhej was raided it was found that Matador No.GQA 5354 was loaded with 26 barrels, wherein 5080 litres of kerosene was found, while in rikshaw GJ1-Y-4535 was loaded with 4 barrels wherein 1400 litres of kerosene was found. In another vehicle bearing GRX-3556, 2 empty barrels were found. All the vehicles were ready to leave the place for effecting the delivery to the black marketeers. The petitioner had not maintained true and correct accounts and necessary registers. The bills were not correctly prepared, and they were misleading. Getting the blue coloured kerosene, by chemical process petitioner was making it white-coloured. He was then selling it at a higher price to the black marketeers. With the result the people were deprived of the kerosene. The common people had therefore to undergo several hardships. In order to check his such malpractices, encouraging black economy, the District Magistrate studied the materials before him and formed the opinion that stern action against the petitioner was required to be taken, but according to his belief whatever action under general law, if taken, would be a futile exercise as the said law was sounding dull. He then found that the only way to curb the black marketing activities of the petitioner out was to pass the order of detention under the Act. He therefore invoking his powers passed the order in question, pursuant to which the petitioner is at present kept under detention.

3. On several grounds, the order of detention is assailed, but at the time of hearing before me, both the

parties confined to the only point namely representation having been not considered promptly by the Central Government. Under Article 22 (5) of the Constitution of India, whenever such detention order is passed, the detainee has to be informed providing necessary documents and particulars so that he can make effective representation against the order passed. If he makes the representation after the receipt thereof, the concerned authority has to deal with the same promptly and dispose the same of at the earliest as liberty of the citizen is put at the highest pedestal in the Constitution. Whenever without any trial a man is confined, the authority passing the order or receiving the representation must be prompt in disposing of the representation, but if there is undue delay the order of detention if passed has to be declared unconstitutional. At this stage, it is necessary to refer the decision of the Supreme Court rendered in the case of Raghavendra Singh vs. Superintendent, District Jail, Khanpur and others - AIR 1986 S.C. 356, wherein it is laid down that the representation must be dealt with promptly and disposed of without any undue delay. Till the same is disposed of, without wasting the time, the same has to be attended to and final decision has to be passed. If the representation is received by one authority who is not supposed to deal with the same, his duty would be to promptly send it to the concerned department or authority so that the said authority may after the receipt thereof deal with the same promptly and dispose the same of at his earliest without wasting his time. In the case before the Supreme Court, the representation was sent to the President's Secretariat, and the Prime Minister's Secretariat received the same on 19th March, 1985; and thereafter it was sent to the Ministry of Home Affairs on 25th May 1985; the same was then dealt with on May 31, 1985. There was, therefore no delay so far as the Ministry of Home Affairs was concerned. But there was a delay in sending the representation from Prime Minister's Secretariat to the Ministry of Home Affairs. In that regard, it was argued before the Supreme Court that the representation should have been addressed to the Ministry of Home Affairs and not to the President or Prime Minister because the President or the Prime Minister receives thousands of memorials or representations from every part of the country and therefore it was not expected to be dealt with as expeditiously as possible as they would be considered had the same been addressed to the appropriate ministry. Dealing with the contention, it is observed that, even if the representation is sent to the Prime Minister or the President, the same has to be sent to the concerned department for taking

appropriate action. There may be some delay in sending the representation from one Secretariat to the concerned department or Ministry, and in that case some allowance may be made for the time taken in forwarding the representation to the appropriate Ministry, and even taking all such time allowance if the representation is not dealt with promptly and no appropriate order at the earliest is passed, the detenu will be entitled to be set at liberty. It is also observed that even if the representation is addressed to the President or the Prime Minister, no fault can be found with the representation because the "Central Government" means the 'President' or the 'Prime Minister', and if the representation is addressed to the President or the Prime Minister, the same should be considered to be the representation properly addressed to the Central Government.

4. In view of such law made clear by the Supreme Court, the detention order cannot be maintained if the representation is considered after unjust delay or not at all considered. The affidavits of Mr.P.D.Shah, Mr.V.S.Ghadvi, District Magistrate, Ahmedabad and Mr.K.V.S.Rao, Under Secretary, Ministry of Food & Consumer Affairs are filed. It appears perusing the same that the petitioner sent the representation directly to the Central Government and not through the State Government. After the receipt of the representation the Central Government had to, within 7 days of the receipt of the same, deal with the same and pass appropriate orders. The Central Government also received the approval order passed by the State Government on 14.1.1998, but thereafter how the same was delayed is not explained, or say and not convincing explanation is offered. The Authority filing the affidavit has thus conveniently remained silent. The silence in the affidavit is sufficient to agree with the petitioner that uptill now though representation is received by the Central Government no final order has been passed thereon. Thus the valuable right of the petitioner has been jeopardised. The order of the continued detention on the ground of undue delay qua representation is unconstitutional and illegal and the same on that ground is required to be quashed.

5. For the aforesaid reasons, this application is allowed. The order of detention dated 1.1.98 is quashed and set aside. The petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule accordingly made absolute.

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